FOR ARGUMENT

(14)

Supreme Court, U.S.
FILED
MAR 24 1995
OFFICE OF THE CLERK

No. 94-5707

# In The Supreme Court of the United States
## OCTOBER TERM, 1994

SHARLENE WILSON — PETITIONER

V.

STATE OF ARKANSAS — RESPONDENT

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

## SUPPLEMENTAL BRIEF FOR THE RESPONDENT

WINSTON BRYANT
Arkansas Attorney General

OF COUNSEL:

ANDREW D. LEIPOLD
University of Illinois
College of Law
504 E. Pennsylvania Ave.
Champaign, IL 61820
(217) 333-0931

KENT G. HOLT*
VADA BERGER
DAVID R. RAUPP
Assistant Attorneys General
200 Tower Building
323 Center Street
Little Rock, AR 72201
(501) 682-2007

ATTORNEYS FOR RESPONDENT

*COUNSEL OF RECORD

March 21, 1995

PARAGON PRINTING & STA., 311 East Capitol Avenue, Little Rock, AR 72202 (501) 375-1281

BEST AVAILABLE COPY

5 pp

No. 94-5707

# In The Supreme Court of the United States
**OCTOBER TERM, 1994**

SHARLENE WILSON — PETITIONER

V.

STATE OF ARKANSAS — RESPONDENT

---

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

---

## SUPPLEMENTAL BRIEF FOR THE RESPONDENT

---

Respondent submits this supplemental brief pursuant to Rule 25.5 to discuss the applicability of *Arizona v. Evans*, No. 93-1660, 63 U.S.L.W. 4179 (U.S. March 1, 1995), which was decided after Respondent's Brief was filed. *Evans* concerned whether the exclusionary rule requires suppression of evidence seized incident to an arrest resulting from an inaccurate computer record. In declaring that the exclusionary rule was inapplicable where the error is attributable to court personnel, the Court reaffirmed the analytical framework employed by Respondent in section III of its brief.

1. The Court reaffirmed Respondent's contention (Resp.Br. 29-31) that suppression of evidence is not an automatic remedy for a violation of the Fourth Amendment. The Amendment itself "contains no provision expressly precluding the use of evidence obtained in violation of its commands[ ]" and the use of such evidence works no new constitutional wrong. *Evans*, 63 U.S.L.W. at 4182. Rather, the appropriateness of the exclusionary remedy, which is an inquiry "separate" from whether a violation has occurred, depends on its success in achieving its stated goal: "to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." *Id.* (citations omitted). Thus, even if petitioner in this case were to establish that the entry into her house was made in an unreasonable manner, she is not necessarily entitled to the suppression of any evidence seized in the warrant search of her house.

2. The Court further recognized, as Respondent's Brief asserts (Resp.Br. 31-32), that the exclusionary rule should be invoked only where its remedial objective of deterrence is "most efficaciously served[.]" *Evans*, 63 U.S.L.W. at 4183 (citation omitted). Exclusion of evidence for an unannounced entry



would not serve as a deterrent, given that the failure to knock and announce is not motivated by a desire to seize evidence -- the police already have a warrant that permits that seizure -- but instead by a desire to secure the scene to ensure the safe and effective execution of the warrant.

3. Finally, the Court reaffirmed *United States v. Leon*, 468 U.S. 897 (1984), and *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), which announced the good-faith exception to the exclusionary rule, as well as *Illinois v. Krull*, 480 U.S. 340 (1987), which extended the exception to objectively reasonable reliance on the constitutionality of a state statute which is subsequently declared unconstitutional. *Evans*, 63 U.S.L.W. at 4182-4183. These three precedents, taken together, bar the application of the exclusionary rule to this case. (Resp.Br. 33-34 & n.24.) Neither the Arkansas Rules of Criminal Procedure nor the Arkansas Supreme Court have imposed a knock-and-announce requirement on the execution of warrants, and the Arkansas Court of Appeals has declined to create one. *Dodson v. State*, 4 Ark. App. 1, 5-10, 626 S.W.2d 624, 626-629, *cert. denied*, 457 U.S. 1136 (1982). Officers who relied in good faith

on state law would have had no reason to believe that their conduct was improper.

In sum, *Evans* supports Respondent's argument concerning the unsuitability of suppression as a remedy for any hypothetical constitutional violation in this case.

Respectfully submitted,

WINSTON BRYANT
Arkansas Attorney General

OF COUNSEL:

ANDREW D. LEIPOLD
University of Illinois
College of Law
504 E. Pennsylvania Ave.
Champaign, IL 61820
(217) 333-0931

KENT G. HOLT*
VADA BERGER
DAVID R. RAUPP
Assistant Attorneys General
200 Tower Building
323 Center Street
Little Rock, AR 72201
(501) 682-2007

ATTORNEYS FOR RESPONDENT

*COUNSEL OF RECORD

March 21, 1995